

Exhibit A

Zuffa's Notice of Supplemental Authority

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15
16 UNITED STATES DISTRICT COURT

17 DISTRICT OF NEVADA

18 Cung Le, Nathan Quarry, Jon Fitch, Brandon
19 Vera, Luis Javier Vazquez, and Kyle
Kingsbury on behalf of themselves and all
20 others similarly situated,

21 Plaintiffs,

22 v.

23 Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

24 Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**DEFENDANT ZUFFA, LLC'S
NOTICE OF SUPPLEMENTAL
AUTHORITY REGARDING
ZUFFA'S MOTION TO EXCLUDE
TESTIMONY OF DR. SINGER
(ECF No. 524).**

On June 25, 2018 the Supreme Court decided *Ohio v. American Express Co.*, -- S. Ct. --, 2018 WL 3096305 (2018) (“*Amex*”). Among other things, *Amex* made clear a previously uncertain area of antitrust law – in order to prove anticompetitive effects of a vertical restraint, plaintiffs are required to define a market. This decision impacts the Court’s assessment of Zuffa’s Motion to Exclude the Testimony of Dr. Singer (ECF No. 524) because Plaintiffs opposed that motion, in part, by arguing that defining a market was *not* necessary when direct evidence is available. Opposition to Singer *Daubert* (“Singer *Daubert* Opp.”) ECF No. 534 at 37 n.61. That argument is now invalid after *Amex*.

In *Amex*, the Supreme Court considered whether plaintiffs (the United States and 17 states) had met their burden of proving that Amex’s non-discrimination provisions in its contracts with merchants caused anticompetitive effects in the credit-card market. *Amex*, 2018 WL 3096305 at *7. A key question on appeal was the scope of the relevant market and whether the district court had properly assessed the impact of the challenged provisions on both sides of the relevant market. *Id.* at *8. Relying solely on direct evidence to prove anticompetitive effects, Plaintiffs argued they were not required to define a market because they instead “offered actual evidence of adverse effects on competition – namely, increased merchant fees.” *Id.* at *8 n.7. The Supreme Court rejected this argument.

The Court made clear that unlike unlawful horizontal restraints which involve agreements between competitors and thereby do not always require plaintiffs to define a market, “vertical restraints are different.” *Id.* “Vertical restraints often pose no risk to competition unless the entity imposing them has market power, which cannot be evaluated unless the Court first defines the relevant market.” *Id.* As a result, even where a plaintiff relies “exclusively on direct evidence” in order “to assess this evidence, [the Court] must first define the relevant market.” *Id.*

In Plaintiffs’ Opposition to Zuffa’s Motion to Exclude the Testimony of Dr. Singer, Plaintiffs contend that defining a market is not necessary when they can demonstrate direct effects. Singer *Daubert* Opp. at 37 & n.61. Plaintiffs put forward Dr. Singer’s impact regression as direct evidence of market power and claim that “market definition is only necessary for indirect proof of market power.” *Id.* Dr. Singer’s impact regression purportedly measures the

1 effect on wage share from an increase in the share of athletes who have signed contracts
2 containing the challenged contractual provisions. Because those provisions involve an agreement
3 between athletes and promoters, those provisions are vertical in nature. Dr. Singer's regression
4 therefore cannot be accepted as direct evidence of anticompetitive effects without additional
5 evidence that Dr. Singer's analysis is based on a properly defined relevant market.

6
7 Dated: July 5, 2018

Respectfully Submitted,

8 BOIES SCHILLER FLEXNER LLP

9
10 By: /s/ Nicholas A. Widnell

11 Nicholas A. Widnell

12 *Attorneys for Defendant Zuffa, LLC, d/b/a*
13 *Ultimate Fighting Championship and UFC*

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15 **CERTIFICATE OF SERVICE**

16 The undersigned hereby certifies that the foregoing **Zuffa's Notice of Supplemental**
17 **Authority** was served on July 5, 2018 via the Court's CM/ECF electronic filing system addressed
18 to all parties on the e-service list.

19
20
21 /s/ Roderick Crawford

22 An employee of Boies Schiller Flexner